

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

IN RE MASSEY ENERGY CO.  
SECURITIES LITIGATION

CIVIL ACTION NO. 5:10-CV-00689

**DON L. BLANKENSHIP, BAXTER F. PHILLIPS, JR.,  
ERIC B. TOLBERT AND J. CHRISTOPHER ADKINS'  
MOTION TO DISMISS PLAINTIFFS' CONSOLIDATED  
AMENDED CLASS ACTION COMPLAINT**

COME NOW the defendants Don L. Blankenship, Baxter F. Phillips, Jr., Eric B. Tolbert and J. Christopher Adkins, by counsel, and move this Court for an Order, pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, dismissing the Plaintiffs' Consolidated Amended Class Action Complaint for failure to state a claim upon which relief can be granted.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law, these defendants respectfully request that this Court GRANT their Motion to Dismiss and reward them such other and further relief as this Court may deem just.

DON L. BLANKENSHIP, BAXTER F. PHILLIPS, JR.  
ERIC B. TOLBERT, and J. CHRISTOPHER ADKINS  
By Counsel



Thomas V. Flaherty (WV Bar #1213)  
Tammy R. Harvey (WV Bar #6904)  
Flaherty Sensabaugh Bonasso PLLC  
P. O. Box 3843  
Charleston, WV 25338-3843